

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, August 23, 2006, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** James Ward, Chairman  
Robert Bartholomew  
Paul Schultz  
Walter Schmidt  
Ray Dwyer

**BOARD MEMBERS ABSENT:** None

**SECRETARY TO THE BOARD:** Sheri Mount

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
Arlene Hensen, owner, BA06:058  
Henry & Laura Metzinger, friends, BA06:058  
Dan & Sharon Bauer, owner, BA06:060  
Kent Johnson, petitioner, BA06:060  
Norm Eckstaedt, neighbor, BA06:060  
Todd Lynch, petitioner, BA06:059

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Dwyer *I make a motion to approve the Summary of the Meeting of August 9, 2006.*

The motion was seconded by Mr. Bartholomew and carried 4-1. Mr. Schmidt abstained.

**NEW BUSINESS:**

**BA06:047 BRIAN & KAY CULLEN**  
**Paul Schultz – Petitioner**

Mr. Schmidt *I make a motion to adopt the staff's recommendation for approval, with the conditions stated in the Staff Report, for the reasons stated in the Staff Report with the following change:*

*Condition #10 shall be changed to read: "Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff. In addition, the owner must connect to municipal sewer as soon as it becomes available"*

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for approval for variances from the offset, floor area ratio and open space requirements of the Ordinance, with the following conditions:

1. All existing structures (including the shed at the shoreline) must be removed from the property prior to issuance of a Zoning Permit for the new residence. The residence, attached garage, decks, and patios must be a minimum of 55.4 ft. from the 100-year floodplain elevation or the Ordinary High Water Mark of Okauchee Lake, whichever is more restrictive, with overhangs not to exceed two (2) ft. in width.
2. The proposed residence and attached garage shall not exceed a total floor area of 2,875 sq. ft. (19.5%). This includes the first and second floors (not including the basement level), any covered decks, covered patios, and/or covered porches, and the attached garage.
3. The proposed residence must not exceed three stories (including any exposed basement level), as viewed from the lake. The proposed residence and attached garage must conform to the height requirements of the Ordinance.
4. The residence must be at least 7 ft. from the western and eastern lot lines, as measured to the outer edges of the walls and any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width.
5. Any sidewalks, stairs, or walkways along the sides of the residence must be located at least three (3) ft. from the side lot lines.
6. No new or rebuilt retaining walls will be permitted within 75 ft. of the lake, unless the Planning and Zoning Division staff determines that they are necessary for erosion and sediment control. No retaining walls will be permitted within 5 ft. of the side lot lines, without approval from the Town of Merton Plan Commission and the Waukesha County Park and Planning Commission.
7. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, attached garage, any proposed decks or patios, as well as any proposed sidewalks, stairs, walkways, and/or retaining walls, as well as any existing structures (i.e. retaining walls) that are proposed to remain, in conformance with the above conditions, must

be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also show the field-located location of the 100-year floodplain elevation on the property.

9. In order to ensure the construction of a new residence and attached garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. This grading plan may be combined with the Plat of Survey required in Condition No. 8.

10. Occupancy shall not be permitted until municipal sewer is available to the property.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. Further, the variances from offset, floor area ratio and open space are essentially temporary, as the structures on the property, as conditioned, will be completely conforming once sewer is in place. In addition, the approval, as conditioned, will also result in the removal of the nonconforming shed at the shoreline. The shed is not necessary for reasonable use of the property and if the property owners need more storage space, they now have the opportunity to create that space in the new residence and attached garage. As recommended, a total floor area of 2,875 sq. ft. (not including the basement square footage) provides a reasonable use of the property, is not unnecessarily burdensome and will permit the construction of a residence and attached garage that will be appropriately sized for the lot, and not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA06:058 ARLENE T. HENSEN**

Mr. Dwyer

*I make a motion to adopt the staff's recommendation for approval, with the conditions stated in the Staff Report, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval of the road setback offset, and open space requirements of the Ordinance, with the following conditions:

1. The proposed garage must be located at least 4 ft. from the north lot line, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform to the offset requirements.

2. The area between the garage and the north lot line may not be composed of impervious surfaces and must be vegetated.
3. The garage shall not exceed 228 sq. ft. in size as proposed.
4. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed garage, in conformance with all conditions of approval, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. The garage must contain only one story and it must conform to the height requirements of the Ordinance.
6. The proposed garage may contain an upper-level storage area only if the garage conforms to the height requirements noted in Condition #5 and only if that upper level is not accessible via a permanent staircase. Any upper level of the garage must be accessed via pull-down stairs only.
7. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property. This grading plan may be combined with the survey required in Condition No. 4.
8. No additional remodeling or additions to the residence are permitted without additional approvals from Waukesha County.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. Granting of the road setback, offset and open space variances allows the petitioner to utilize the existing footprint of the carport for a new attached garage, while not increasing the degree of nonconformity of the structure. The one car garage will be located no closer to the lot line and the road as the existing carport. Therefore the approval of this request, with the recommended conditions, will permit the construction of an attached garage that will be more aesthetically pleasing than the existing carport, will not be detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA06:059 ANDREW J. HOFF & STEVEN G. HORVATH**  
**Todd Lynch – Petitioner**

Mr. Schmidt

*I make a motion to adopt the staff's recommendation for approval, with the conditions stated in the Staff Report, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Dwyer and carried 4-1. Mr. Schultz voted against.

The staff's recommendation was for **denial** of the request for a variance from the shore setback and floodplain setback requirements of the Ordinance, but **approval** of the request for variances from the road setback floor area ratio, and open space requirements of the Ordinance with the following conditions:

1. All existing structures, including decks and retaining walls must be removed from the property prior to issuance of the Zoning Permit for the new residence. A 30% (30 ft. width) "view corridor" is permitted for access to the lake, which may consist of a 3 ft. wide walkway and/or mowed grass. The remaining area between the residence and the shore shall be planted with a buffer of native vegetation. A plan for the shoreline restoration and revegetation shall be submitted to Planning & Zoning Division staff for review and approval prior to issuance of the Zoning Permit for the new residence.
2. The proposed residence, including the first and second floors (not including the basement level), attached garage, any covered decks, covered patios, and/or covered porches, and the attached garage shall not exceed 1,800 sq. ft.
3. The total footprint shall be no larger than 1,300 sq. ft. and must consist of at an attached garage of at least 400 sq. ft. in size and a first floor of at least 850 sq. ft.
4. The proposed residence must not exceed three stories (including the exposed basement level), as viewed from the lake. The proposed residence and attached garage must conform to the height requirements of the Ordinance.
5. The proposed residence and decking must be located at least 33.75 ft. from the shoreline and 30.8 ft. from the 100-year floodplain, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform to the offset/setback requirements.
6. The proposed residence and attached garage must be located a minimum of 6.5 ft. from the established right-of-way of Nickels Point Road as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform to the offset/setback requirements.
7. The decking must be a minimum of 10 ft. from the property lines and the residence and attached garage must be a minimum of 16.67 ft. from the property lines as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform to the offset/setback requirements.
8. Prior to the issuance of a zoning permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.

9. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed residence and verifying that the shed, two decks and all retaining walls have been removed from the property and in conformance with all conditions of approval, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also identify the location of the 100-year floodplain on the property.
10. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
11. All existing retaining walls must be removed. Any newly proposed retaining walls must be incorporated into the Grading Plan required in Condition No. 12. The use of retaining walls shall be minimized to the maximum extent possible. In addition, all retaining walls must be “screened” from the lake with vegetation. All newly proposed retaining walls shall be 4 ft. in height or less as measured from final grade at the bottom of the wall to the top of the highest point of the wall. Any retaining walls proposed within 5 ft. of the side lot lines require approval from the Town of Oconomowoc Plan Commission and the Waukesha County Park and Planning Commission.
12. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 9.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The denial of the shore and floodplain setback variance requests is justified as the residence and decking could be constructed on this property to meet both the shore setback and the floodplain setback requirements of the Ordinance. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

The approval of the request for variances from the road setback, floor area ratio and open space requirements of the Ordinance, as conditioned, will allow the petitioner to construct a new single-family residence with attached garage that is appropriately sized for the lot and will result in the removal of several extremely nonconforming structures from the property. With the basement

level, the residence could provide 3,100 sq. ft. of living and storage space, which provides a reasonable use of this very small and nonconforming property. Therefore the approval of this request, with the recommended conditions, provides a reasonable use of the property, is not unnecessarily burdensome, and not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA06:060 DANIEL & SHARON BAUER**  
**Johnson Design – Petitioner**

Mr. Ward

*I make a motion to adopt the staff's recommendation for approval, with the conditions stated in the Staff Report, for the reasons stated in the Staff Report with the following change:*

*Condition #1 shall be changed to read: "The proposed residence, including the first and second floors, and attached garage, shall not exceed 2,200 sq. ft. The 145 sq. ft. screen porch and 90 sq. ft. covered veranda do not count against the 2,200 sq. ft. as long as they are built on piers and not on any type of block, concrete or permanent foundation. Any other covered patios, covered porches, covered decks, covered verandas, screen porches, etc. (other than the proposed 145 sq. ft. screen porch and 90 sq. ft. veranda) do count against the total allowable 2,200 sq. ft. no matter how they are constructed."*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for **denial** of the request for a variance from the road setback requirements, but **approval** of the request for variances from the floodplain setback, floor area ratio, and open space requirements of the Ordinance, with the following conditions:

1. The proposed residence, including the first and second floors, attached garage, any covered decks, covered patios, and/or covered porches, and the attached garage shall not exceed 2,200 sq. ft.
2. The total footprint shall be no larger than 1,300 sq. ft. and must consist of at an attached garage of at least 400 sq. ft. in size and a first floor of at least 850 sq. ft.
3. The residence and attached garage and all other appurtenances must not exceed two stories, as viewed from the lake and the road. The proposed residence and attached garage must conform to the height requirements of the Ordinance.
4. No detached structures are permitted.
5. The residence and attached garage and all other appurtenances must be located at least 58.3 ft. from the shoreline, as measured to the outer edges of the walls, provided the overhangs do

not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform to the offset/setback requirements.

6. The residence and attached garage and all other appurtenances must be located a minimum of 35 ft. from the established right-of-way of Nokoma Drive as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform to the setback requirements.
7. The first floor of the structure (residence and attached garage) must be placed at least two (2) ft. above the 100-year floodplain elevation (flood protection elevation of 855.6). The foundation shall be flood proofed and certified as set forth herein. Fill shall be used to elevate the first floor so as to meet the above. The fill shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation at least fifteen (15) feet beyond the limits of the structure. Where such distance cannot be achieved because of lot lines or other similar constraints, said fill elevation shall extend as far as is practicable resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties. In addition, where the fifteen (15) feet of fill cannot be achieved as set forth above, the structures shall be flood proofed to the flood protection elevation in accordance with the methods set forth herein and shall be certified as such by a professional engineer registered in the State of Wisconsin. Other methods may be used, as long as they are certified as set forth above. All flood proofing measures shall at a minimum provide anchorage to resist flotation and lateral movement, and shall insure that the structural walls and floors are watertight. In order to insure that adequate measures are taken, the applicant shall submit a plan or document certified by a professional engineer that the flood proofing measures are adequately designed to protect the property to the flood protection elevation.
8. The construction shall not impede drainage, reduce the flood water storage capacity of the floodland or result in an increase regional flood height. The submitted plans and calculations must demonstrate that the proposed fill of the floodplain does not impede drainage, reduce the floodwater storage capacity of the floodland, raise flood stages by more than 0.01 ft. as regulated by Section NR116 or cause ponding. The effect of filling and altering any floodplain must be calculated by performing a Hydraulic & Hydrologic Analysis (i.e. HEC-RAS). All calculations must conform to the standards contained in NR 116 of the Wisconsin Administrative Code. If the flood stages are increased by more than 0.01 of a foot, compensating storage capacity of the floodplain must provided on this property in a manner that is not deleterious to other properties or the quality of any waters. This analysis must be performed and certified by a Professional Engineer licensed in the State of Wisconsin.
9. No change in the existing topography or drainage courses on any land will be allowed which will result in adversely altering the drainage or increasing any portion of the existing slope through fill and/or grading to a ratio greater than three (3) horizontal to one (1) vertical. Further, no fill or alterations will be permitted under any circumstances, which will alter the drainage or topography in a way that will adversely affect the surrounding lands.



10. Upon completion of the foundations of the residence and attached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions. A copy of that certification must be submitted to the Town of Oconomowoc Building Inspector and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff, prior to proceeding with construction.
11. The fill area and the fill around the residence shall be in accordance with the final Grading Plan, to be approved by the Town Engineer and in accordance with the standards of FEMA Technical Bulletin No.10.
12. Upon completion of the project, an "As-Built" Grading Plan, showing the finished grades on the property must be prepared by a registered land surveyor and submitted to the Town Engineer and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff. If that "as-built" Grading Plan indicates that the property has not been filled in accordance with the approved Grading Plan, the petitioners shall make whatever changes are necessary to bring the property into conformance with the approved Grading Plan. The final plans and fill and floor elevations shall be submitted to FEMA to obtain LOMR-F certification if flood insurance is to be avoided.
13. You must provide proof of plan submission, review and either approval or waiver of approval from the Wisconsin Department of Natural Resources and the Army Corps of Engineers prior to this office taking official action.
14. Prior to the issuance of a zoning permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
15. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, attached garage, any proposed decks or patios, as well as any proposed sidewalks, stairs, and walkways, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also show the existing location of the 100-year floodplain elevation on the property.
16. No retaining walls are permitted.
17. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 15.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome and is in scale with the lot size. The denial of the road setback variance is necessary, as variances should be granted only to provide the minimum relief necessary for a reasonable use of the property. It is felt by the Waukesha County staff, that the petitioner's proposed residence and attached garage are too large for the lot and can also be located to conform to the road setback requirements, especially if its size is reduced. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested road setback variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

It is also possible to construct a more reasonably sized residence and attached garage that is more conforming to the district requirements than the requested proposal, while also providing a reasonably sized residence in scale with the lot's size. The recommended floor area ratio of 2,200 would permit a total floor area ratio of 22.8%, which provides a reasonable use of this small property. There is no basement level possible on this property; however, none of the residences on this road have basements. However, the lack of a basement does justify some relief from the floor area ratio requirements. There are a few larger homes along Nokoma Drive, but they are located on substantially larger lots or were constructed under different Ordinance requirements. The approval of the request for variances from the floodplain setback, floor area ratio and open space requirements of the Ordinance, as conditioned, will allow the petitioners a reasonable use of the property, is not unnecessarily burdensome and will permit the construction of a residence and attached garage that will be appropriately sized for the lot, and not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

#### **ADJOURNMENT:**

Mr. Dwyer

*I make a motion to adjourn this meeting at 8:25 p.m.*

The motion was seconded by Mr. Schmidt and carried unanimously.

Respectfully submitted,

Sheri Mount  
Secretary, Board of Adjustment